IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO. 5986 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri P.M. Shah for the petitioner.

Mr. K.Y. Mandlik for respondent.

CORAM : ANOOP V. MOHTA, J.

DATE : 28.11.2005

. By the present writ petition a challenge is made to the order dated 4th March, 1998, whereby, the District Judge, Solapur, after considering the merits of the matter, allowed the appellant/original plaintiff to withdraw the suit, with permission to file fresh suit on the same cause of action, on condition of payment of cost of Rs. 300/- to the respondents.

2. Heard the Counsel appearing for

the parties. Petitioner's basic contention was Order 2 Rule 1 and 2 Sections 9 and 11, of Civil Procedure Code (C.P.C.) based on the decision of (Smithkline Beecham Consumer Healthcare Gambhy and others V. Hindustan Lever Ltd. and another) (2002)(1) MLJ 453) in which the High Court has observed that the plaintiff should raise all grounds available in his first suit itself. The Court has also considered the issue of subsequent suit on the same cause of action. The learned Counsel appearing for the petitioner further submitted that this amounts to multiplicity of proceedings and abuse of the process of the Court. Therefore, the discretion should not have been used by the Court in such manner.

. The learned Counsel appearing for the respondent made a statement that based on the order dated 4/3/1998 the plaintiffs have already filed a composite

suit on 27th April, 1998 bearing R.C.S. No.33/1998 for an injunction and declaration and other reliefs. The said suit is pending. The other side i.e. respondent/petitioner has appeared and are contesting the said suit.

3. Provisions of order 23 Rule 1 is very clear that the Court has power to allow the parties to file fresh suit, if sufficient grounds are made out. There is nothing borne out or pointed out by the advocate appearing for the petitioner that by granting such relief or use of such discretion in favour of the parties, prejudice would be caused to the petitioner. In the present matter, original suit was only for simple injunction and not for declaration. The Court therefore, after considering the rival contentions raised by the parties, has exercised the power rightly. According to me, it is within the frame work of law and the record. The order is

correct.

4. Taking all this into account, the present writ petition therefore, is dismissed, with no order as to cost.

(ANOOP V.MOHTA,J.]